



Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011

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Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011

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Commencement: Sections 1 to 3 on the day the Act receives Royal Assent. Schedule 1: the day after the Act receives Royal Assent; Schedule 2: a day to be fixed by Proclamation. If provisions do not commence within six months beginning on the day the Act receives Royal Assent, then on the day after the end of that period.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

This Bill proposes to amend the *Broadcasting Services Act 1992* (the BSA) with the aim of easing the regulatory burden on regional commercial radio broadcasters. At the same time, the Bill intends that licensees will be required to continue to provide local content for regional audiences.

The Bill proposes to provide exemptions to local content requirements for certain broadcasters and to revise provisions relating to changes of control of licences, known as ‘trigger events’.

The Bill also includes amendments which are intended to ensure consistency with international obligations under the Australia—United States Free Trade Agreement.

Background

Diminishing local voices

James Oswin argued in a 1980s study that from the beginning of Australian broadcasting the objective of serving local interest had been integral to planning and licensing decisions. Oswin considered this concept, which can be labelled ‘localism’, traditionally referred to a vague notion that broadcasting stations should ideally be situated in as many local areas as possible and that the only limitation to this requirement was that stations needed to remain viable.¹ It can be argued that localism was in fact more than a vague notion; indeed it ‘reflected a desire to extend the facility of

1. J Oswin, *Localism in Australian broadcasting: a review of the policy of localism in Australian broadcasting*, Department of Communications, 1984.

broadcasting to places outside the capital cities, especially to distant country listeners'.² Localism encapsulated the idea that local control and programming could, and should cater for the particular needs and diverse interests of communities across Australia, particularly communities in regional and remote areas.

When the current legislation, which regulates regional commercial radio broadcasting, came into operation its wording continued to reflect this tradition of localism. There was an expectation embedded in the provisions of the *Broadcasting Services Act 1992* (the BSA) that commercial radio broadcasting programming should be required to cater for the particular needs and interests of the communities situated within licence areas and that local radio should deal with matters of local significance.

Despite this expectation, by 2001 it appeared that the longstanding commitment to localism had begun to diminish in regional areas. A House of Representatives Standing Committee on Communications, Transport and the Arts inquiry into regional radio concluded in fact that the delivery of services in the bush had been adversely affected as the result of a combination of technological, economic and regulatory developments in the broadcasting industry. The report of this inquiry expressed alarm that many local radio voices had been replaced by an increasing number of networked, pre-recorded, automated and syndicated programs.³

Prior to the introduction of the Howard Government's media reform package in 2006 a number of other reports reached similar conclusions—local content on regional radio and television broadcasting was in serious decline. Some remedial action was taken as a result; for example, in 2003 the Australian Broadcasting Authority imposed licence conditions on regional television stations which required them to broadcast a specified amount of local content.⁴

Media reform package 2006

The Howard Coalition Government considered Australia's media regime was anachronistic and inflexible and that it did not take into account a rapidly changing broadcasting environment and the impact of the emergence of new media options on the market and consumer behaviour.⁵ For this reason the Government attempted to introduce changes to media regulation on a number of occasions. It was not until 2006, after it had gained a majority in the Senate, however, that the

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2. Committee of Review of the Australian Broadcasting Commission, *The ABC in review: national broadcasting in the 1980s*, Australian Government Publishing Service, Canberra, 1981, p. 56.
 3. House of Representatives Standing Committee on Communications, Transport and the Arts, *Local voices: an inquiry into regional radio*, Canberra, September 2001, viewed 10 May 2011, http://www.aph.gov.au/house/committee/cita/regional_radio/Report/radioreport.pdf
 4. Australian Broadcasting Authority, *Adequacy of local news and information programs on commercial television broadcasting services in regional and rural Australia (Solus operator and two operator markets)*, Sydney, June 2004, viewed 10 May 2011, <http://www.acma.gov.au/webwr/assets/main/lib310197/localcontent-june04.pdf>
 5. Regulation Impact Statement, Broadcasting Services Amendment (Media Ownership) Bill 2006, p. 13.

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Government was able to introduce a package of reforms to remove cross-media and foreign ownership regulation.

The Government argued that its reforms would benefit the media and there would be flow on benefits for consumers. At the same time, as the original Explanatory Memorandum to the media ownership component of the media ownership package acknowledged, the Government was aware that the intention to remove cross-media ownership restrictions might compound the trend to diminution of levels of local content broadcast on radio in regional areas.⁶ Consequently, its 2006 media reform package included a commitment to ensuring that its liberalisation of the media regulatory framework would not further reduce local content on commercial radio or commercial television. Legislation was introduced which required for example, that after 4 April 2007 companies in regional areas which engaged in cross-media mergers—what were to be designated as ‘trigger’ events—were required to maintain existing levels of local presence. That is, those companies were required to maintain the levels of staffing and use of studios and production facilities which had existed before the events.⁷

Local content requirements also required broadcasters to provide a prescribed minimum level of local news and information services if a licence had been transferred to a third party or a new, commonly-controlled media group was created. Local content conditions initially were that broadcasters delivered 4.5 hours of local content and 12.5 minutes of local news on business days and licensees were required to demonstrate in a Local Content Plan how they intended to meet these requirements.⁸

Initial review of local content requirements

It was not long before the new local content provisions were questioned, as the media ownership legislation required that a review of the appropriate minimum level of local content imposed on radio licensees was to be conducted by June 2007. The review, undertaken by the Australian Communications and Media Authority (ACMA), concluded that significant numbers of FM and AM licences would not be able to meet the local content requirements.⁹ The diversity of the regional market, in ACMA’s view, made it impractical to impose an overall local content requirement, or to

6. Revised Explanatory Memorandum, Broadcasting Services Amendment (Media Ownership) Bill 2006, viewed 10 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs527%22>

7. Australian Communications and Media Authority (ACMA), *Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice*, 22 March 2007, viewed 10 May 2011, http://www.acma.gov.au/webwr/assets/main/lib101061/bs_addtnl_reg_comm_radio_lic_cond-local_presence_%20notice_22_mar_07.pdf

8. The provisions commenced on Proclamation 4 April 2007. Business days were defined as between 6am and 6pm.

9. ACMA, *Local content levels investigation report*, June 2007, viewed 18 October 2011, http://www.acma.gov.au/webwr/assets/main/lib310132/local_content_levels_investigation_report.pdf

expect that each station could provide 12.5 minutes of local news each day, for one reason because of the prohibitive cost of doing so.¹⁰

ACMA therefore made a number of recommendations for changes to the local content requirements. In general, these were accepted by the Government, and revised requirements came into force under a BSA local content determination.

The revised provisions vary according to licence class. They require licensees to broadcast at least an applicable number of hours of material of local significance per class during daytime hours on business days (see Box 1 below for details).

Box 1: current local content conditions

Regional radio operators must broadcast an applicable number of hours of material of local significance during daytime hours on each business day.

(Material of local significance is defined as material that is hosted in, produced in or relates to a regional commercial radio licence area.

A business day is defined as between 5am and 8pm).

The majority of regional commercial radio stations must broadcast three hours of material of local significance.

Broadcasters in licence areas with a population of 30 000 or less and those that hold a licence under section 40 of the Act must broadcast 30 minutes of material of local significance.¹¹

Broadcasters in remote areas and racing radio broadcasters must broadcast five minutes of material of local significance.

Broadcasters are required to demonstrate compliance with local content obligations in an annual report to ACMA, to keep an audio record of local content broadcast for six months and to compile a local content statement for each business day.¹²

10. Ibid. ACMA estimated that producing 4.5 hours of local content would cost between \$20 000 and \$120 000 and the 12.5 minutes of news between \$12 000 and \$60 000 annually.

11. A service licensed under section 40 of the BSA may not use the broadcasting services bands (BSB) to deliver its service. The broadcasting services bands are the designated parts of the radiofrequency spectrum which have been referred to ACMA for planning under section 31 of the *Radiocommunications Act 1992*. Normal analogue commercial broadcasting services (AM and FM radio services and free-to-air UHF and VHF television services) are provided on the BSB.

12. Broadcasting (Hours of Local Content) Declaration No. 1 of 2007, viewed 20 January 2012, <http://www.comlaw.gov.au/Details/F2007C00690>

Productivity Commission report

Similarly, the local content provisions were seen as problematic by the Productivity Commission (PC/the Commission) in its annual review of regulatory burdens on business conducted in 2009.¹³ According to the Commission, radio stations were in the best position to judge what their audiences wanted, but the local content conditions did not allow regional commercial radio stations the flexibility to tailor their programs to suit the needs of listeners. The Commission called for a more flexible approach to be adopted. This could allow for local content requirements to be aggregated over a period of time for example, or for exemptions to be granted to requirements to accommodate regular occurrences, such as staff absences. The Commission also saw other difficulties with the local content obligations, noting for example that there was most likely not sufficient local content available to broadcast over racing stations. In addition, the Commission concluded the local content reporting framework was too onerous:

Reporting requirements can impose a significant regulatory burden on broadcasters, without contributing to the production of local content. The administrative burden of the reporting requirements may have the effect of reducing the resources which broadcasters can invest in producing local content.¹⁴

The local presence conditions applied to trigger events created by the transfer of licences, the formation of new cross media groups and the change of a controller of a cross media group were of further concern for the Commission. The PC saw the requirement to maintain staffing levels in perpetuity and use of infrastructure within licence areas as increasing the risks of business failure for stations which were prevented from responding to changing economic circumstances. Moreover, in its view, the Commission considered these restrictions prevented traditional media from utilising economies of size and scope to deal with the advent of new media options. As such, the restrictions had the potential to threaten the viability of regional media providers and to undermine the intention of the media reform legislation which sought to enhance diversity (see summary of conditions in Box 2 below).¹⁵

13. Productivity Commission, *Annual review of regulatory burdens on business: social and economic infrastructure services, Research report*, Canberra, August 2009, viewed 18 October 2011, http://www.pc.gov.au/data/assets/pdf_file/0003/91344/social-economic-infrastructure.pdf

14. Ibid.

15. Ibid.

Box 2: trigger event

A trigger event currently imposes additional requirements on licensees.

They must:

- maintain in perpetuity an existing level of local presence. This is defined in terms of staffing levels and broadcasting hours produced in the period three months before the trigger event.
- broadcast at least 12.5 minutes of local news at least five days a week¹⁶
- broadcast local weather reports at least five days per week
- broadcast at least one community service announcement per week and emergency warnings as required, and
- submit to ACMA for approval a Local Content Plan that details how they will comply with their local news and information obligations, and report annually on compliance with the Plan.

Second review of local content conditions

In March 2010, the Minister for Broadband, Communications and the Digital Economy, Stephen Conroy, released a local content discussion paper. This was in response to local content issues raised by the Productivity Commission, ACMA and regional commercial broadcasters. In addition section 61CT of the BSA requires a review of local content, local presence and trigger event requirements every three years. Among other things the local content discussion paper asked:

- should regional commercial broadcasters be given greater flexibility to deliver material of local significance?
- should the local content and presence requirements in the Act apply to racing, remote and section 40 licences?
- should there be a time limit on requirements to maintain local presence conditions after a trigger event? and
- should requirements be modified to ensure a more appropriate application of the trigger event related provisions?¹⁷

A small number of submissions were received to the discussion paper, mostly from the regional radio industry, and a report on findings was tabled in Parliament in March 2011.¹⁸

16. Note: if a licensee has broadcast more than five local news bulletins per week in a 12 month period leading up to a trigger event, then this must continue after the event.

17. Department of Broadband, Communications and the Digital Economy, *Local content requirements for regional commercial radio*, discussion paper, March 2010, viewed 24 October 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0008/126674/Regional_Commercial_Radio_Local_Content_Review.pdf

18. Department of Broadband, Communications and the Digital Economy, *Review of local content requirements for regional commercial radio, Final report*, March 2011, viewed 20 January 2012, http://www.dbcde.gov.au/_data/assets/pdf_file/0011/133103/Report_of_the_review_of_local_content_requirements_for_regional_commercial_radio.pdf

Broadcasters' views

Responses from commercial broadcasters to the March 2010 discussion paper indicated that they were clearly unhappy with the local content requirements. Indeed, the tone of some individual submissions was bitter. Southern Cross media called the requirements 'disproportionately burdensome' on regional radio and argued that no other form of media in Australia was subject to such a degree of regulation.¹⁹ Independent Regional Radio saw the current licence conditions as inequitable, inflexible, counter-productive and oppressive.²⁰ Smartradio considered trigger events were introduced 'to provide substantial financial benefits to major media moguls at the expense of small regional radio operators'.²¹

The broadcasters supported a submission from the industry representative body, Commercial Radio Australia (CRA), which gave in principle recognition to the importance of local content. But at the same time, the CRA argued strongly that the existing legislation threatened 'the viability of the regional commercial radio industry by imposing inflexible and unworkable operating conditions and significant additional compliance costs and obligations'. It asked for changes to be introduced to allow local content broadcast on any day of the week to be counted towards broadcasters' local content obligations and for a reduction in the number of weeks that material of local significance was required to be broadcast—from 52 to 46 weeks a year. It also opposed local presence conditions and urged the Government either to repeal them or restrict the requirement to a maximum period of 12 months. It sought a narrowing of the definition of a trigger event so that it only concerned instances which involved cross media mergers.²²

Individual submissions elaborated on the CRA's calls. For example, with regards to the requirement to broadcast material of local significance, some broadcasters argued this did not take into account industry awards which provided for up to six weeks leave for staff, staff turnover or difficulties and costs involved in engaging qualified production and on-air staff for short periods.

Several submissions sought more radical change than the CRA had proposed for trigger events. Grant Broadcasters for instance, was in favour of repealing the provision, but if that were not

19. Southern Cross Media, Submission to the review of local content requirements for regional commercial radio, viewed 24 October 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0006/127797/Southern_Cross_Media.pdf

20. Independent Regional Radio, Submission to the review of local content requirements for regional commercial radio, March 2010, viewed 24 October 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0003/127794/Independent_Regional_Radio_IRR.pdf

21. Smartradio, Submission to the review of local content requirements for regional commercial radio, 31 March 2010, viewed 24 October 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0005/127796/Smart_Radio.pdf

22. Commercial Radio Australia, Submission to the review of local content requirements for regional commercial radio, March 2010, viewed 24 October 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

possible, it sought exemptions for intergenerational change, partner buy out, radio to radio sale, corporate restructure and changes to licence areas.²³

The issue of market size was also raised. Austereo and Canberra FM, operators in the Canberra and Newcastle market, argued that trigger event and additional local content obligations are unnecessary impositions in larger competitive regional markets.²⁴ Redwave Media, on the other hand, argued that there was significant difficulty attached to attempting to present material of local significance in sparsely populated remote licence areas which cover thousands of kilometres.²⁵

Overall, however, there was industry consensus. The call was for a more balanced approach which the broadcasters claimed could take into account both commercial and public interest.

Other views

In contrast to the views of the commercial radio broadcasters, the Community Broadcasting Association of Australia (CBAA) argued that proposals to spread the same 'small' amount of local content across a whole week in essence reduced the amount of local content regional listeners would receive. In CBAA's view:

Greater flexibility for regional radio broadcasters is hardly the pressing need to be addressed. If, as the Review clearly states, "the broad intent of the regional commercial radio localism provisions remains valid" then regional commercial radio licensees should be required to broadcast material of local content *in addition* [emphasis in original] to what is already required. The opportunities for coverage of local weekend issues and events in regional and remote Australia are too obvious and numerous to mention.²⁶

Two submissions from the public also expressed concern that the local content obligations had not delivered enough local content for regional listeners.²⁷

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23. Grant Broadcasters, Submission to the review of local content requirements for regional commercial radio, 1 April 2010, viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0010/127792/Grant_Broadcasters.pdf
 24. Austereo, Submission to the review of local content requirements for regional commercial radio, n.d., viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0005/127787/Austereo.pdf and Canberra FM Radio, 29 March 2010, viewed 24 October 2011.
 25. Redwave Media, Submission to the review of local content requirements for regional commercial radio, March 2010, viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0004/127795/RedWave_Media.pdf
 26. Community Broadcasting Association of Australia, *Review of regional commercial radio local content requirements*, submission, 1 April 2010, viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0008/127790/CommunityBroadcastingAssociationofAustralia_CBA_A.pdf
 27. C Wilson, Submission to the review of local content requirements for regional commercial radio, 29 March 2010, viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0009/127791/Craig_Wilson.pdf and I Stanley, Submission to the review of local content requirements for regional commercial radio, n.d., viewed 24 October 2011, http://www.abc.gov.au/data/assets/pdf_file/0011/127793/Ian_Stanley.pdf

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In its submission, the Communications Law Centre (CLC) referred to the tradition and importance of localism in Australian broadcasting.²⁸ There is a public interest dimension in providing local broadcasting to regional areas, according to the CLC, which assists citizens to carry out their duties as members of communities. Moreover, the CLC acknowledged the tacit recognition of the significant public interest in local broadcasting in the BSA. It noted further that the BSA is required generally to provide an efficient and competitive regulatory environment that is responsive to audience needs.²⁹

The CLC voiced its concern with the decline in localism in regional broadcasting and the trend to consolidation and syndication over the years:

Ideally, market forces ought to ensure that audience needs are met; the broadcaster must act in the best interest of the audience or risk losing market share. Unfortunately, many regional markets are duopolies and thus far from competitive. Because of the availability of economies of scale, broadcasters have a strong incentive to consolidate, centralising content and operation. The incentive to act in the best interests of the audience is comparatively weak, as the audience had no way of 'punishing' the broadcaster if it chooses to reduce its localism output, by switching to an alternative commercial radio provider.³⁰

Consequently, the CLC agreed with community radio that spreading the local content requirements over a whole week may lead to stations abandoning their commitment to news and current affairs on certain days; thereby, not adequately fulfilling their role of informing public discussion and debate. The CLC argued:

Weekend programming tends to be focussed on the genres of sport and entertainment, moving away from news and current affairs. While such programs are undoubtedly desirable in their own right, they are not a perfect substitute for news and information programming on business days. Given the choice, the broadcaster may scale back its local news and current affairs content during the week and substitute it for sport, general interest or voice tracked programming on the weekend.³¹

The CLC differed from industry recommendations in other areas also. While it agreed that maintaining a local presence over vast areas was problematic, it was not convinced there was not a solution. Television had solved a similar problem by dividing licence areas into sub markets, a solution which could work for radio. Similarly, while the CLC agreed that expecting remote licences to provide 12.5 minutes of local news per business day following a trigger event would affect commercial viability, it was not convinced some commitment was not possible; five minutes of local news in sub markets could 'fulfil a minimum service standard'.³² At the same time, the CLC was not

28. Communication Law Centre (CLC), Submission to Regional Radio Review, 9 April 2009 [sic] [note: submission signed 9 April 2010], viewed 24 October 2011,

http://www.dbcde.gov.au/data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

29. Ibid.

30. Ibid. Includes information from submission no. 273.01, vol. 8, p. 2052 (Private Citizen) in *Local voices*, op. cit.

31. CLC, Submission to Regional Radio Review, op. cit.

32. Ibid.

intractable in its assessment. It recognised, for example, that a better option in regulating racing services and section 40 licences would be to assess them as narrowcasters, since they attracted a specialised audience.³³

With regards to local presence requirements, the CLC supported the introduction of a time limit on maintenance of local presence and modifications to section 61CB of the BSA so that trigger events were defined only as those that had an impact on 'the programming and operation of the licence'.³⁴ The CLC view on local presence requirements did not extend to the issue of local news services, however. While it acknowledged that presenting local news did impose a financial burden on broadcasters, it saw the continuance of local news and information as essential in fostering participatory democracy. It considered that perhaps some compromise in allowing broader definitions of local material to include repeat news broadcasts would help to balance the interests of broadcasters with the public interest.³⁵

Committee consideration

On 25 November 2011 the Selection of Bills Committee resolved not to refer this Bill to a committee for consideration.

Policy position of non-government parties/independents

Apart from responses to inquiries on the matter, this legislation has elicited little comment from industry or the public. Chief Executive Officer of Commercial Radio Australia, Joan Warner, welcomed the announcement that this legislation would be introduced, noting that the industry has worked hard for changes to the existing requirements.³⁶

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33. Sections 17 and 18 of the *Broadcasting Services Act 1992* define narrowcasting services as broadcasting services whose reception is limited by: being targeted to special interest groups; intended only for limited locations; provided during a limited period of time; because they provide programs of limited appeal; or for some other reason. Narrowcasting services operate under a broadcasting class licence regime, with minimum levels of regulation. Subscription narrowcasting services differ from open narrowcasting services in that they are made available only on payment of subscription fees.
34. CLC, Submission to Regional Radio Review, op. cit.
35. Ibid.
36. Commercial Radio Australia, *Radio industry welcomes trigger event amendments legislation*, media release, 14 October 2011, viewed 20 December 2011, http://www.commercialradio.com.au/index.cfm?page_id=1001&display_news_id_6750=1923

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Nationals member for Cowper, Luke Hartsuyker commented that the Coalition would be monitoring any intended change to local content and licence conditions for regional radio, given the importance of this content for rural and regional communities.³⁷

Main issues

In effect, there is one fundamental issue which is crucial to the debate about content, presence and trigger event obligations—what can be done to ensure that consideration of the interests of commercial radio do not cancel the public interest in maintaining a commercial presence in regional radio markets.

Viability of regional commercial radio

It is argued that regional commercial radio is highly regulated and the least viable of the regulated media sectors. In its submission to the Productivity Commission in 2009, the industry body CRA noted that there were 261 commercial radio stations in Australia at the time—221 of these operating in regional areas.³⁸ CRA claimed that the industry included many small operators, who were ‘ill equipped to deal with excessive regulatory requirements’. This was particularly so in regional areas where the regulatory burden since the 2006 media reforms was highest and where the revenue base was smallest.³⁹

CRA argued:

Regulatory requirements have a disproportionate effect on the viability of small licensees. Such licensees have few staff and limited infrastructure. Many staff within such organisations fulfil a number of different roles. These stations struggle to meet their compliance obligations while maintaining focus on their core business of radio broadcasting. Commercial Radio Australia’s members in both regional and metropolitan areas already serve their local communities well, by providing listeners with programs that are relevant, informative and entertaining.

37. L Hartsuyker, *Proposed changes to local content requirements for regional radio stations*, media release, 24 October 2011, viewed 20 December 2011, <http://www.lukehartsuyker.com.au/portfolio/media-releases/2011/498-proposed-changes-to-local-content-requirements-for-regional-radio-stations-.html>

38. Most recent ACMA figures from *Commercial Radio Broadcasting Licences*, 31 August 2011 indicate there are 273 commercial radio licences nationally; 12 of these are non Broadcasting Services Band (BSB) licences. Sources differ on how many regional stations there are. Based on the ACMA document, it appears that there are 216 regional BSB stations, but other figures differ slightly. ACMA Document viewed 19 December 2011, http://www.acma.gov.au/webwr/assets/main/lib100052/lic022_commercial_radio_broadcasting_licences.pdf

39. CRA, Submission by Commercial Radio Australia, *Productivity Commission annual review regulatory burdens on business: social and economic infrastructure services*, 2009, viewed 19 December 2011, http://www.pc.gov.au/data/assets/pdf_file/0003/86304/sub006.pdf

The local content and trigger event regulations and the Disclosure Standard threaten this service, as every dollar spent to meet the requirements of unnecessary regulation takes a dollar away from the amount that radio licensees have available to spend on programming.⁴⁰

CRA has claimed that the cost of complying with the current regime requirement for local production is between \$12 000 and \$60 000, and in addition, legal costs associated with trigger events amount to approximately \$50 000.⁴¹ If these costs are linked to figures which suggest that smaller regional stations deliver average total service revenues amounting to approximately half a million dollars per year, then these costs can be seen as considerable.

But the reality is that most regional stations are not 'small' local businesses. The regional commercial radio industry is highly concentrated. As the Explanatory Memorandum for this legislation points out, 32 entities own all regional radio licences.⁴² Southern Cross media, following a merger with Austereo, is the largest of these entities, owning 70 regional licences. Five radio networks own at least 70 per cent of all regional radio licences and 80 per cent of licences are controlled by 12 networks.

Clearly, these operators would not remain in the business if it were unprofitable overall. However, traditional media sectors, including radio, have for some time complained that increases in operational cost and competition for audiences and advertisers from new media sources have significantly reduced profitability. And it is an undeniable fact that in 2008–09 a number of regional radio stations failed to make a profit.⁴³ It may be, as the commercial operators have insisted, that regionally-specific local content and local presence obligations have contributed to that situation. But it is equally a fact that, like other regulated media in Australia, commercial radio is becoming more concentrated and the idea of local voices is becoming less attractive to networks which can syndicate programs with less resources.

Public interest issue

Given that the national broadcaster maintains 51 regional radio stations, which provide news, information and other local content, it could be argued that the Australian Broadcasting Corporation adequately fosters participatory democracy and fulfils public interest requirements for regional radio listeners. Therefore, the solution which would best assist regional commercial radio to remain viable would be for the Government to abolish the current local content, presence and trigger event obligations. The networks which control most of these licences could then move towards providing centralised, syndicated services to all stations under their control, abandoning any pretence of delivering local content to those stations. Stations that were not parts of a network would also have more choice. They could choose to deliver local content or subscribe to one of the networks.

40. Ibid.

41. Ibid.

42. Explanatory Memorandum, Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011, p. 5.

43. ACMA figures cite 41 unprofitable regional stations in 2008–09.

Australian localism has strongly emphasised the contribution of both the national broadcaster and commercial radio in providing content that is relevant to the communities served. So if the situation noted above were to be adopted, this brand of localism upon which Australian radio broadcasting was founded would most likely be no more. Such a situation would be unfortunate at least, given that the hybrid model which has emphasised the need to accommodate local needs has long been successful and praised by many. Noted broadcasting historian Ken Inglis, for example, has considered the Australian brand of broadcasting incorporates the best of the British and American approaches.⁴⁴

The Explanatory Memorandum to this Bill indicates that it is not the intention for this legislation to abandon localism. It does not use public interest terminology in justifying a decision not to entertain the option to remove all local content and local presence requirements for regional radio licenses. However, its declaration appears to be based on a public interest consideration. Hence, it concludes that while it may be economically beneficial to remove all vestiges of local content conditions, such action 'would not meet the policy objective for regional commercial radio services to provide a minimum amount of content that is relevant to the communities they serve'⁴⁵

In effect, the action of the Howard Government in imposing the local content, presence and trigger event requirements and the reaction of this Government in proposing to relax these obligations have both been prompted by the same motivation—to preserve localism on regional radio. On the one hand, it can be argued that the Howard Government's solution imposed overly onerous obligations on commercial broadcasters, whereas this compromise not only makes regional commercial radio more viable for the future, it preserves local content for regional audiences.

On the other hand, it can be argued that while the Government's compromise may indeed better serve the interests of regional commercial radio, it will not effectively serve the public interest unless alternative arrangements are introduced to preserve what has been a long standing commitment to the delivery of local content on both regional commercial stations and the public broadcaster. One way this could occur is to provide more funding to the Australian Broadcasting Corporation to introduce more stations into its local radio network, thereby 'localising' it even more. But given the contraction in real funding for the ABC over many years, this is unlikely to occur.⁴⁶ Another option would be to encourage more community broadcasters to establish stations in regional areas by increasing funding specifically allocated to this broadcasting sector to assist in the production of local content.⁴⁷

44. K Inglis, *This is the ABC; the Australian Broadcasting Commission 1932–1983*, Black, Melbourne, 2006, p. 8

45. Explanatory Memorandum, op. cit., p. 16

46. The ABC currently has 60 local stations (9 metropolitan and 51 regional), these stations broadcast to 99.38 per cent of the Australian population.

47. Legislated under the *Broadcasting Services Act 1992* community broadcasting stations are operated as independent, not-for-profit organisations. Important objectives of community broadcasting are to encourage access and participation by members of their communities in all aspects of operations and to support and develop local and Australian arts, music and culture. Community broadcasting stations vary enormously from licence to licence,

Key provisions

Broadcasting Services Act 1992

Schedule 1

Item 6 of Schedule 1 will insert a **new subsection 43B(1A)** into the BSA to change the existing **local presence licence condition**. The new subsection will require broadcasters to maintain at least an existing level of local presence for a period of 24 months after a trigger event. The new licence condition will apply only to trigger events that occur after the commencement of Schedule 2 to the Bill. **Item 16** provides for transitional arrangements, so that trigger events that may occur before the commencement of Schedule 1 will be subject to the new **local presence** requirement for 24 months after the commencement of that Schedule. Trigger events that commence after the commencement of Schedule 1, but before the commencement of Schedule 2 will be subject to the new local content requirements from the date of those events. **Item 7** will insert a **new subsection 43B(4A)** which will exempt remote area service radio licences (as under a **new section 8AF**) and regional racing radio licences (as defined by **item 3**) from the local presence condition in described in **item 6**.

Item 8 will insert **new subsection 43C(1A)**. This subsection will modify the current **local content conditions** for regional commercial radio which require content to be broadcast on every week of the year. This new subsection will allow ACMA, by legislative instrument, to specify a period up to five weeks during which regional broadcasters do not have to broadcast local content. The period will be continuous and will begin on the second Monday in December each year, although ACMA may specify a different period for certain licences. The Explanatory Memorandum notes that the exemption period is to begin on a Monday because the current obligations apply to daytime hours on business days (that is, days that are not Saturdays, Sundays or Public Holidays).⁴⁸

Item 9 will exempt remote service radio licences and regional racing service licences from local content conditions.

Item 10, in effect, clarifies that changes to local content licence conditions do not apply in relation to Australian music content required to be aired by regional radio broadcast services. Australian music content is subject to conditions set out in the Commercial Radio Code of Practice. It is also subject to conditions as set out in the Australia—United States Free Trade Agreement.

depending on the needs and interests of the local communities and the specific communities of interest they serve—including youth, senior citizens, arts, fine music, Australian music, sport and other specialist interests, as well as providing specific services for Indigenous, religious, print handicapped and ethnic communities. Regardless of how long people listen to community radio, ‘specialist music programs’ and ‘local information/ local news’ are the main motivations for listening. McNair Ingenuity Research, *Community radio national listener survey: summary report of findings*, prepared for Community Broadcasting Association of Australia, 12 July 2010, viewed 24 January 2012, <http://www.cbaa.org.au/sites/default/files/1018RA%20Summary%20Report%20-%20Final.pdf>

48. Explanatory Memorandum, op. cit., p. 21.

Under the commercial radio code, quotas, which depend on ‘the availability of Australian music to suit station formats’, have been adopted by the industry. These depend on station formats. For example, stations labelled as Category A are required to broadcast not less than 25 per cent Australian music, while no requirement to broadcast Australian music applies to news, talk back and sport stations.⁴⁹

The Australia—United States Free Trade Agreement states that for certain sectors or activities new or more restrictive measures, such as market access and local presence, may be adopted. The transmission of Australian music to the quota limit of 25 per cent is one such sector.⁵⁰

The Explanatory Memorandum notes that **item 10** intends to repeal and replace existing **subsections 43C(4) to (4C)** so that local content provisions will in the future ‘concern Australian music’. The Explanatory Memorandum continues:

Local content in this context includes both Australian music and other local content covered by the regional commercial radio local content provisions.

The amendments to section 43C will provide clarity for industry by setting out the relationship between the requirements in the BSA and the requirements in the Code of Practice to assist them in determining the level of local content they are required to broadcast.⁵¹

Existing **subsection 43C(3)** sets out a default applicable Australian music number (4.5). However, under a **new subsection**, the Minister will be empowered to declare different applicable numbers less than 4.5 for some, or for all regional commercial radio stations. The Explanatory Memorandum explains in detail the formulae for the Australian music number.

Schedule 2

Item 10 of **Schedule 2** will broaden the definition of **trigger event**. **New subsection 61CB(1A)** will define a trigger event as occurring after the commencement of the subsection when a **control event** happens. A control event is defined in the Bill as when ‘a person starts to be in a position to exercise control of a regional commercial radio broadcasting licence’ or when ‘a person ceases to be in a position to exercise control of a regional radio broadcasting licence’.

Subsection 61CB(1A) does not apply if the control event is attributable to the transfer of shares from one person to another, there is no financial consideration involved and the transfer is between near relatives (defined in **Item 2**). The subsection also does not apply if the control event ‘is attributable

49. Category A stations are listed as stations that play mainstream rock, album oriented rock, contemporary hits, top 40 and alternative, *Commercial Radio Codes of Practice & Guidelines*, September 2011, viewed 20 December 2011, http://www.acma.gov.au/webwr/aba/contentreg/codes/radio/documents/commercial_radio_codes_and_guidelines_5sept2011.pdf

50. Annex II, Australia—United States Free Trade Agreement, viewed 20 December 2011, http://www.dfat.gov.au/fta/ausfta/final-text/non-conforming_measures/Annex_II_combined.pdf

51. Explanatory Memorandum, op. cit., p. 23.

to circumstances beyond the control of each person who was, immediately before the control event occurred, in a position to exercise control of the regional commercial radio broadcasting licence'. A **new subsection 61CB(1D)** will allow for regulations to be made that may provide for further exemptions.

Concluding comments

The intention of this Bill is to reach a compromise which serves both the interests of regional commercial radio broadcasters, while continuing to ensure that local news and information services additional to those provided by the national broadcaster are delivered to rural and regional communities. The Bill makes a reasonable attempt to satisfy both the interests of broadcasters and the public interest. However, there remains some scope for criticism in that any dismantling of local content provisions for commercial licensees may conflict with conditions in the BSA which call for the Act to 'promote the availability to audiences throughout Australia of television and radio programs about matters of local significance'.⁵² There is, however, scope for the dismantling of local requirements for commercial radio to be accompanied the provision of some form of additional resources to public broadcasters and/or community broadcasters. Such a compensatory action may assist in maintaining the tradition of blended local commercial and public local broadcasting which regional Australians have experienced since the 1930s.

52. BSA, section 3(1)(ea).

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